

RECORDING REQUESTED BY:

Randell Manufacturing  
P.O. Box 110  
Porterville, California 93286

WHEN RECORDED MAIL TO:

Department of Toxic Substances Control  
Fresno District Office  
1515 Tollhouse Road  
Clovis, CA 93611  
Attention: Calden Koehn

98-015264

Recorded  
Official Records  
County of  
Tulare  
Greg Hardcastle  
Recorder  
2:16pm 5-Mar-98

Rec Fee 31.00  
MOD 27.00  
Check 58.00

NM 9

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

### COVENANT

TO RESTRICT THE USE OF FORMER MANUFACTURED GAS PLANT SITE  
(CONSENT ORDER HSA 93/94-008)  
299 SOUTH MAIN STREET, PORTERVILLE, CALIFORNIA

This Covenant and Agreement ("Covenant") is made on the 30<sup>th</sup> day of January, 1998, by the Randell Manufacturing ("Covenantor"), who is the owner of record of certain property situated in the City County of Tulare, State of California, its legal description is Lots 19, 20 and 21 in Block 50 of the City of Porterville, in the County of Tulare, State of California, as per Map recorded in Book 3, page 18 of Maps, in the office of the County Recorder of said County (the "property"), described in Exhibits "A & B" attached hereto and incorporated herein by reference, and by the Department of Toxic Substances Control ("Department") with reference to the following facts:

- A. The property, formerly a manufactured gas plant site, contains hazardous substances, resulting from those operations during the early part of the twentieth century.
- B. The former manufactured gas plant was operated from 1908-1916 by others. The property occupies approximately 0.15 acres in the City of Porterville and currently is owned by Covenantor and leased to Golden State Paint & Body. Adjacent land use is primarily light industrial and commercial. The nearest residence is located approximately two blocks away from the property.
- C. Results of the Preliminary Endangerment Assessment (PEA) conducted at the property indicate that the primary contaminants associated with gas plant by-products are polycyclic aromatic hydrocarbons (PAHs). The Department considers the PAHs to be the contaminant of primary concern, since some PAHs are carcinogenic or potentially carcinogenic.

- D. The remediation of the property which has been completed has reduced health risks to an acceptable level for industrial usage as defined by regulatory standards.
- E. Covenantor desires and intends that in order to further protect the present and future public health and safety and the environment, the property shall be used in such a manner so as to avoid potential harm to persons or property which may result from hazardous substances deposited on the property and which were identified in the PEA and addressed in the Remedial Action Plan. To this end, the restrictions in this document are intended to assure that the property is not used for purposes that could cause individuals to come in contact with the remaining contaminants on the property.

## ARTICLE I GENERAL PROVISIONS

1.01 Provisions to Run With the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions", upon and subject to which the property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed). Each and all of the Restrictions are imposed upon the entire property unless expressly stated as applicable to only a portion of the property. Each and all of the Restrictions are imposed pursuant to Sections 25355.5 and 25356.1 of the California Health and Safety Code and run with the land pursuant to Section 25355.5. Each and all of the Restrictions are enforceable by the Department.

1.02 Concurrence of the Owners Presumed. All purchasers, lessees, or possessors of any portion of the property shall be deemed by their purchase, leasing or possession of the property to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of the purchasers, lessees or possessors, or their heirs, successors and assignees, that the Restrictions herein established must be adhered to for the benefit of future Owners and Occupants and their interest in the property shall be subject to the Restrictions contained herein.

1.03 Incorporation Into Deeds and Leases. Covenantor desires and covenants that the Restriction set out herein shall be incorporated by reference in each and all deeds and leases of any portion of the property.

## ARTICLE II DEFINITIONS

2.01 Department. "Department" shall mean the California Department of Toxic Substances Control and shall include its successor agencies, if any.

2.02 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the property.

2.03 Occupants. "Occupants" shall mean those persons entitled by ownership, leasehold, or other legal relationships to the exclusive right to occupy any portion of the property.

2.04 Owner. "Owner" shall mean the Covenantor or its successors in interest, including heirs, and assigns, who hold title to all or any portion of the property.

### ARTICLE III DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

3.01 Restriction On Use. Owner shall restrict the use of the property as follows:

- A. (1) The Owner shall not allow the construction or placement of a building or structure on the Property, which is intended for use as any of the following, or the use of an existing structure for the purpose of serving as any of the following without first applying for and receiving a written variance from the Department for that use pursuant to Article IV of this covenant and agreement:
- a. A residence.
  - b. A hospital for humans.
  - c. A school or day care center for persons under 18 years of age.
  - d. Any permanently occupied human habitation other than those used for industrial or commercial purposes that are not specifically excluded above.
- (2) The Owner shall not conduct any activities on the Property, which may cause a potential threat to public health and the environment resulting from the release of hazardous substances contained on the property.
- (3) Owner shall not conduct any activities on the Property, which may interfere with any operation, maintenance, or monitoring activities required by the Department.

3.02 Maintenance. Owner shall maintain the property concrete on a regular basis to prevent incidental contact with potentially contaminated soil.

3.03 Conveyance of Property. The Owner or Owners shall provide a thirty (30) day advance notice to the Department of any sales, lease, or other conveyance, excluding encumbrances, of the property or an interest in the property by a third person. The Department shall not, by reason of the Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the property, but nothing herein shall prevent the Department from enforcing the provisions of the Covenant.

3.04 Enforcement. Failure of the Owner to comply with any of the requirements, as set forth in paragraphs 3.01 and 3.02, shall be grounds for the Department, by reason of the Covenant, to require that the Owner or Occupant modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Department to file civil and criminal action against the Owner as provided by law.

3.05 Notice in Agreement. All Owners and Occupants shall execute a written instrument which shall accompany all purchase, lease, sublease, or rental agreements relating to the property in compliance within the requirements of California Health and Safety Code Section 25359.7.--The instrument shall contain the following statement:

"The land described herein contains hazardous substances associated with the former operation of a manufactured gas plant. Such conditions render the land and the owner, lessees, or other possessor of the land subject to requirements, restrictions, provision, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the Health and Safety Code. This statement is not declaration that a hazard exists. A Covenant to Restrict the use of said land has been recorded and is applicable to said land."

#### ARTICLE IV VARIANCE AND TERMINATION

4.01 Variance. Any Owner or, with the Owner's consent, any Occupant of the property or any portion thereof may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Section 25233 of the California Health and Safety Code.

4.02 Termination. Any Owner or, with the Owner's consent, any Occupant of the property or a portion thereof may apply to the Department for termination of the restrictions as they apply to all or any portion of the property. Such application shall be made in accordance with Section 25234 of the California Health and Safety Code.

4.03 Term. Unless terminated in accordance with paragraph 4.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

#### ARTICLE V MISCELLANEOUS

5.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the property or any portion thereof to the general public or for any purposes whatsoever.

5.02 Notices. Whenever any person gives or serves any notice, demand, or other communications with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or official of a government agency being served, or (2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

To: Randell Manufacturing  
P.O. Box 110  
Woodlake, California 93286

Copy to: Department of Toxic Substances Control  
Northern California - Central  
Cleanup Operations Branch  
1515 Tollhouse Road  
Clovis, California 93611

5.03 Partial Invalidity. If any portion of the Restrictions set forth herein or terms is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.04 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not of this Covenant.

5.05 Recordation. This Covenant shall be executed by the Covenantor and by the Northern California - Central Cleanup Operations Branch Chief, California Department of Toxic Substances Control. This Covenant shall be recorded by the Covenantor in the County of Tulare within thirty (30) days of the date of execution).

5.06 References. All references to Code Sections include successor provision.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

BY: Thelma Terry  
Thelma Terry  
Randell Manufacturing

Dated: January 14, 1998

BY: James L. Tjosvold  
James L. Tjosvold, P.E., Chief  
Department of Toxic Substances  
Control  
Northern California - Central  
Cleanup Operations Branch

Dated: January 30, 1998

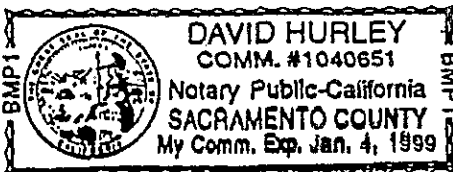
**ALL-PURPOSE ACKNOWLEDGMENT**

State of CALIFORNIA  
County of SACRAMENTO

On 1-30-98 before me, DAVID HURLEY  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared JAMES TJOSVOLD  
NAME(S) OF SIGNER(S)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Witness my hand and official seal.

David Hurley  
SIGNATURE OF NOTARY

**CAPACITY CLAIMED BY SIGNER**

- ☐ INDIVIDUAL(S)  
☐ CORPORATE OFFICER(S) \_\_\_\_\_ TITLE(S) \_\_\_\_\_  
☐ PARTNER(S)  
☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ SUBSCRIBING WITNESS  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER: \_\_\_\_\_

**SIGNER IS REPRESENTING:**  
NAME OF PERSON(S) OR ENTITY(IES)

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to unauthorized document.

THIS CERTIFICATE  
MUST BE ATTACHED  
TO THE DOCUMENT  
DESCRIBED AT RIGHT:

Title or Type of Document \_\_\_\_\_  
Number of Pages \_\_\_\_\_ Date of Document \_\_\_\_\_  
Signer(s) Other Than Named Above \_\_\_\_\_

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

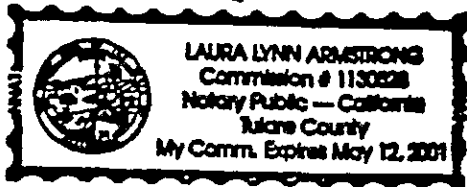
State of California

County of Tulare

On January 14, 1998 before me, Laura Lynn Armstrong  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Thelma Terry  
Name(s) of Signer(s)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Laura Lynn Armstrong  
Signature of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: Covenant

Document Date: 1/14/98 Number of Pages: 7

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer  
Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney-in-Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing:

\_\_\_\_\_  
\_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer  
Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney-in-Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing:

\_\_\_\_\_  
\_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

261-

POR. W 1/2 OF NW 1/4 SEC. 36. T.21S., R.27E.,

261-

4-000

STREET

5 TRIST

**STREET**

**ORANGE**

HOCKEY

**MAIN**

LOCUST

**AVENUE**

FOR MAP OF PORTERVILLE

• R.M. 1-107.

CITY OF PORTERVILLE

POR MAP OF PORTERVILLE • R.M. 1-107.

**ASSESSOR'S MAPS OK. 26%. PG. 10.**

**COUNTY OF TULARE, CALIF.**

PORTERVILLE

QUESTIONS BY SENATOR ROBERTS: 1202 PM OCTOBER 11 - 1964

EXHIBIT A

3-0-0-0



Original Gas Plant Property Line

Unpaved Field



South Hockett Street

South Main Street

Unpaved Lot

Fence

Golden State Paint and Body Shop

Covered Area

Current Property Line

Unpaved Lot

Vacant Building

Fence

0 Approximate Scale 30



Feet

Site Plan

EXHIBIT B

Former Manufactured Gas Plant Site  
Porterville, California